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Kodiak Electric Company, Inc. and Kodiak Line Company, Inc., Alter Egos/Single Employer and/or Joint Employers and International Brotherhood of Electrical Workers, Local 24, AFL-CIO. Case 5–CA–28319

November 13, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND WALSH

On November 27, 2000, Administrative Law Judge Irwin H. Socoloff issued the attached decision. The Respondent filed exceptions and a supporting brief,¹ and the Acting General Counsel submitted both an answering brief and a cross-exception in response.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified below² and to adopt the recommended Order as modified.³

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusions of Law 4.

"4. At all times material here, the Union has been the exclusive collective-bargaining representative of all employees in the unit described above for the purposes of collective bargaining within the meaning of Section 8(f) of the Act."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Kodiak Electric Company, Inc. and Kodiak Line Company, Inc., alter egos, Baltimore, Maryland, its officers, agents, suc-

cessors and assigns shall take the action set forth in the Order as modified.

1. Substitute the following for paragraphs 2(c) and (d).

"(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place to be designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

"(d) Within 14 days after service by Region 5, post at its various facilities copies of the attached notice marked "Appendix."¹⁴⁴ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 1, 1998."

2. Substitute the attached notice for that of the judge.

Dated, Washington, D.C. November 13, 2001

Peter J. Hurtgen,

Chairman

Wilma B. Liebman,

Member

Dennis P. Walsh,

Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

¹ The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

² Although the judge stated in his conclusions of law that the Union was a Sec. 9(a) bargaining representative of the unit employees, the Acting General Counsel's brief notes that the record shows that the Respondent recognized the Union as the employees' bargaining representative, without regard to the Union's majority status, pursuant to Sec. 8(f) of the Act. We shall modify the conclusions of law to correct the judge's inadvertent error.

³ We shall modify the judge's recommended Order in accordance with our decisions in *Indian Hills Care Center*, 321 NLRB 144 (1996), *Excel Corp.*, 325 NLRB 17 (1997), and *Ferguson Electric Co.*, 335 NLRB No. 15 (2001).

We shall also provide a new notice to include a statement of employee rights under Section 7 of the Act.

⁴ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid and protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively with International Brotherhood of Electrical Workers, Local 24, AFL-CIO, by refusing to apply the terms of our collective-bargaining agreements, including wage rates and fringe benefits fund contributions, to the employees; failing to honor the contractual referral procedures and, instead, hiring employees directly and without notification to the Union; repudiating our recognition of, and contracts with, the Union; and by causing work obtained by Kodiak Electric Company to be performed by Kodiak Line Company.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL honor and abide by the terms and conditions of our contracts with the Union, including the exclusive hiring hall provisions, and make whole our employees represented by the Union, and those on the Union's out-of-work list, for any loss of pay and other benefits suffered as a result of our refusal to apply the contracts, plus interest.

WE WILL pay all contractually required fringe benefit fund contributions not previously paid and make unit employees, and those on the out-of-work list, whole for any expenses resulting from the failure to make such contributions, plus interest.

KODIAK ELECTRIC COMPANY, INC. AND
KODIAK LINE COMPANY, INC., ALTER EGOS

Brenda Valentine Harris, Esq., Baltimore, MD, for the General Counsel.

Robert B. Scarlett, Esq., and *Andrew M. Croll, Esq.*, Baltimore, MD, for the Respondent.

Leonard T. Hackett, Esq., and *John Singleton, Esq.*, Baltimore, MD, for the Charging Party.

DECISION

STATEMENT OF THE CASE

IRWIN H. SOCOLOFF, Administrative Law Judge: Upon charges filed on April 22, and October 20, 1999, by International Brotherhood of Electrical Workers, Local 24, AFL-CIO, herein referred to as the Union, against Kodiak Electric Company, Inc., and its alleged *alter ego*, Kodiak Line Company, Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 5, issued a Complaint dated October 28, 1999, alleging violations by the Respondent of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended, herein called the Act. The Respondent, by its Answer, denied the commission of any unfair labor practices.

Pursuant to notice, trial was held before me in Baltimore, Maryland on January 27, February 15 and February 16, 2000, at which all parties were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence. Thereafter, the General Counsel and the Respondent filed briefs which have been duly considered.

Upon the entire record in this case,¹ and from my observations of the witnesses, I make the following.

FINDINGS OF FACT

I. JURISDICTION

Kodiak Electric Company, Inc., a Maryland Corporation with an office and place of business in Baltimore, Maryland, is engaged in the electrical contracting business in the construction industry. Kodiak Line Company, Inc., a Maryland corporation with an office and place of business in Baltimore, Maryland, was formed in 1998, for the primary purpose of engaging in line electrical work. In 1999, both Kodiak Electric and Kodiak Line provided construction industry electrical contracting services to Porter Construction Management, Inc., a commercial general contractor. In that year, Porter, in turn, received at its Maryland, jobsites, goods valued in excess of \$50,000, from locations outside the State of Maryland. Having concluded, *infra*, that Kodiak Electric and Kodiak Line are, as alleged in the Complaint, *alter ego* companies, I find that, together, they constitute an employer engaged in commerce, and in operations affecting commerce, within the meaning of Section 2(2), (6) and (7) of the Act.

II. THE LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

¹ The General Counsel's unopposed motion to correct the transcript of proceedings is hereby granted.

III. THE UNFAIR LABOR PRACTICES

A. Background

Kodiak Electric Company was incorporated in 1991 and, as noted, engaged in electrical contracting work in the construction industry. On August 27, 1997, it recognized the Union, without regard to its majority status among the Kodiak employees, and it signed a letter of assent by which Kodiak Electric agreed to be bound by the then current collective-bargaining agreement, as well as subsequent agreements, between Local 24 and the Baltimore Division, Maryland Chapter, of the National Electrical Contractors Association, Inc. The contract then in force which, as adopted, covered Kodiak Electric's inside journeymen-wiremen, technicians and apprentices, ran from April 1, 1996 until March 31, 1999. Its successor agreement is effective for the period April 4, 1999, until March 31, 2002. Kodiak Electric never signed or expressly adopted the 1999 to 2002 agreement. However, it is undisputed that that Company did not provide timely written notice of intent to terminate the 1996 to 1999 contract, the method of termination specified in the 1996 to 1999 contract, and in the letter of assent.²

Kodiak Line Company was incorporated on June 16, 1998, for, as indicated, the express purpose of engaging in outside line electrical work. Thereafter, by March 1999, Kodiak Electric ceased actively to operate and interior electrical work theretofore obtained and started by that Company was performed by Kodiak Line.

In the instant case, the General Counsel contends that Kodiak Line is the *alter ego* of Kodiak Electric, formed, at least in part, to aid Kodiak Electric in evading its statutory obligations. The General Counsel urges that these entities, as *alter egos*, a single employer or as joint employers, violated Section 8(a)(5) of the Act by failing to honor contractual referral hall procedures, repudiating its collective-bargaining agreement with the Union and by diverting bargaining unit work from Kodiak Electric to Kodiak Line. The Respondent argues that Kodiak Electric is not bound by the terms of the 1999 to 2002 contract and that, in any event, Kodiak Line was formed, for lawful reasons, to engage in a different type of work than that performed by Kodiak Electric, and the two companies are not *alter egos*, a single employer or joint employers.

² The contract provided that, after March 31, 1999, it "shall continue in effect from year to year thereafter . . . unless changed or terminated." The letter of assent states that it "shall remain in effect until terminated by the undersigned employer giving written notice . . . at least one hundred fifty (150) days prior to the then current anniversary date of the applicable approved labor agreement."

B. Facts³

Timothy Demski, a master electrician certified by the State of Maryland, and by several counties in Maryland, is the president, secretary and sole stockholder of Kodiak Electric, a company he formed to do interior electrical work, that is, electrical work, whether inside or outside the structure of a building, that is located within the customer's property line. The scope of that Company's work included new construction, maintenance and renovation. Prior to August 27, 1997, when, as noted, Kodiak Electric signed an agreement sanctioned by Section 8(f) of the Act, its employees were not represented by a union. As Demski was aware when he signed the letter of assent, the collective-bargaining agreement required that signatory contractors seek employees through referrals from the Union's hiring hall.

Kodiak Line was incorporated by Nikki Demski, the wife of Timothy Demski, and she is the president and sole owner of that Company. Timothy Demski has served as vice-president of Kodiak Line and is its operations manager, overseeing its equipment and employees and handling its day-to-day operations. It is undisputed that Nikki Demski does not have an electrician's license and is not knowledgeable about interior electric work, or line work. Ownership of Kodiak Line was placed in her name solely to secure the advantages available to a minority owned or female owned business. While, as indicated, this Company, ostensibly, was created to perform outside line electrical work and meter work, primarily for Baltimore Gas & Electric Company, work not within the coverage of the collective-bargaining agreement, it also performs inside wiring work, albeit, most of its income is derived from work performed for Baltimore Gas & Electric.

Kodiak Electric and Kodiak Line operate their businesses at a shared facility, a warehouse type structure located in Baltimore. As required by the post office, the two entities maintain separate addresses at the same building, 1316 South Baylis Street for Kodiak Electric and 1314 South Baylis Street for Kodiak Line, where they share entrances, offices and facilities without demarcation or separation. All of their occupied space at the building is common space, and they share the same fax number. They also share the services of the two office employees assigned there, Laura Dold and Kimberly Smith. Dold, who was hired by Kodiak Line and has been paid by that Company, performs routine office duties (answering the phone, filing, etc.) for both entities, under the direction of Smith. Smith, designated the office manager for Kodiak Electric and a secretary for Kodiak Line, has performed similar functions for both entities, namely, answering the phone, filing and maintaining books and records. Smith prepares and signs checks for Kodiak Electric and she possesses and exercises similar authority on behalf of Kodiak Line.

³ The fact-findings contained herein are based upon a composite of the documentary and testimonial evidence introduced at trial. Where necessary to do so, in order to resolve significant testimonial conflict, credibility resolutions have been set forth, *infra*. In general, I have viewed with suspicion the testimony of Timothy Demski, the president of Kodiak Electric and the operations manager of Kodiak Line, in light of its internal inconsistencies and, at times, inherent implausibility.

Demski testified that during the period September 1998 through March 1999, when both businesses actively operated, Kodiak Electric employed some 30 employees in the field while Kodiak Line had approximately 12, including individuals who worked for both entities. There is substantial record evidence that, in this period, Kodiak Line employees were assigned to work at Kodiak Electric worksites.

It is undisputed that Timothy Demski, as president of Kodiak Electric, was solely responsible for formulating its labor policies and for its hiring decisions. As an officer of Kodiak Line, and its operations manager, he oversees the hiring of field employees and has final say over hiring and firing decisions. The pleadings establish that one Dave Sauerwein, formerly a foreman, with supervisory responsibilities, for Kodiak Electric, is now a foreman and statutory supervisor for Kodiak Line. In addition, Demski, in his testimony, identified three other jobsite foremen for Kodiak Line, namely Ed Jagodzinski, Tim Johnson and Dave Wiesnewski. Jagodzinski, an admitted statutory supervisor for Kodiak Line, was similarly employed as a superintendent and foreman at Kodiak Electric jobsites. Wiesnewski, employed as an electrician by Kodiak Electric until August 1998, testified that he now works for Kodiak Line, as a journeyman lineman. While so employed, he has been assigned to Kodiak Electric jobsites as "supplementary labor."

The two companies have separate federal employer identification numbers, file separate tax returns and sign separate leases for their common facility. They maintain separate books and accounts and take separate bank loans, have separately titled vehicles and other assets and have separate insurance policies and professional licenses. Regarding the latter, the licenses issued to the two entities were to Timothy Demski, as master electrician. At trial, Demski testified that Kodiak Electric has made loans to Kodiak Line. He was unsure of the amounts so loaned, or if any of the loans have been repaid. There is substantial and credible evidence that, repeatedly, Kodiak Line has paid the bills and obligations of Kodiak Electric for goods and services supplied to Kodiak Electric.

Pursuant to the referral provisions of the collective-bargaining agreement, the Union referred employees to Kodiak Electric, upon request, through November 1998, when referral requests ceased. Earlier, in February 1998, after Kodiak Electric became delinquent in its contractually required payments to the Union's health and welfare funds, the attorney for the funds placed a claim against that Company's bond.⁴ The Union, however, continued to honor Kodiak Electric's referral requests. It did so under its "market recovery program," designed to reduce contractor labor costs by varying, from strict contractual requirements, the mix of manpower, by classification, referred to particular contractors.

As noted, Kodiak Electric ceased to seek referrals from the Union after November 1998. In February 1999, the Union learned that the Company had hired employees having no affiliation with the Union or its hiring hall, including individuals who had responded to "help wanted" advertisements placed in

newspapers, and those sent to Kodiak Electric worksites by Kodiak Line. Demski, at trial, ultimately conceded that, after November 1998, he no longer utilized the hiring hall. He claimed that the Union had not provided the mix of manpower, at acceptable costs, promised; that he, Demski, was dissatisfied with the work performance of those referred and that, contrary to the credible record evidence, the Union was unable to supply sufficient manpower to meet Kodiak Electric's needs.⁵

In his further testimony, Demski identified the Rockview Elementary School project, in Kensington, Maryland, as an example of the Union's inability to refer a sufficient number of electrical workers properly to handle the required work, to the detriment of the Company. The contract for the inside electrical work on that school renovation project was awarded to Kodiak Electric by the general contractor, Porter Construction Management, Inc., on June 24, 1998, and work began in August or September of that year. According to Demski, Porter lodged repeated complaints with him about Kodiak Electric's failure properly to man the job, culminating in Porter's March 17, 1999 letter to Demski terminating the contract with Kodiak Electric due, *inter alia*, to its inability to supply sufficient manpower to accomplish the work. Demski denied that he solicited the foregoing letter. Contrary to his testimony, Peter Robey, the Porter Construction project manager at Rockview, credibly testified that, after he complained to Demski that Kodiak Electric was not adequately manning the job, Demski asked that Robey write "the dirtiest, nastiest letter that we could to terminate the contract with Kodiak Electric Company." Demski told Robey that there was a sister company that did not have manpower constraints and could easily absorb the work that Kodiak Electric was unable to handle. Thus, Robey further testified, the decision to terminate the contract occurred only as a result of Demski's request and, thereafter, Porter Construction contracted with Kodiak Line, dated March 17, 1999, to complete the remainder of the project electrical work for \$325,000, the balance of the original \$530,000 contract with Kodiak Electric. Kodiak Line then proceeded to perform the contract work, lasting until September or October 1999.

Kodiak Line also performed substantial interior electrical work at other jobsites, pursuant to contracts obtained and, in some cases, initially worked by Kodiak Electric. In each instance, the work performed was bargaining unit work under the terms of the applicable labor contract, but contract requirements were not honored. Thus, Demski testified, sometime between January 20 and March 19, 1999, Kodiak Line began performance of the interior electrical work at the Kenwood High School renovation site, in Baltimore, Maryland, pursuant to the contract obtained by Kodiak Electric. Work under this contract had initially been performed by Kodiak Electric. Yet, when Demski turned the work over to Kodiak Line, no new contract was drafted or executed.

On November 12, 1998, Kodiak Electric submitted a bid for the performance of inside electrical work, and ancillary work,

⁴ The contract required that signatory employers furnish a surety bond or certified check in the amount of \$25,000 to secure payment of amounts due under the agreement.

⁵ Under the collective-bargaining agreements, if the Union is unable to refer the requested number of electricians within 48 hours, the signatory contractor is free to obtain employees elsewhere. Likewise, the contractor retains the right to reject or discharge referrals.

to Tech Contracting Co., the general contractor for the Churchville Maintenance Facility project in Harford County, Maryland. An agreement between Kodiak Electric and Tech was prepared for performance of that work but, thereafter, the Kodiak Electric name was crossed out and the Kodiak Line name was handwritten into the proposed contract. The agreement, as changed, was signed by Timothy Demski, as president of Kodiak Line, on or about February 8, 1999. On March 30, 1999, by facsimile transmission, Kodiak Line secretary Laura McEvoy (formerly Laura Dold) advised a supplier for the project that “Kodiak Electric, Kodiak Welding and Kodiak Line have been reorganized under one company—Kodiak Line Corporation, Inc.” Thereafter, on May 4, by letter, Kodiak Line informed a vendor that “Kodiak Electric Company has changed its name to Kodiak Line Corporation.”

On November 18, 1998, Kodiak Electric submitted its proposal to Orfanos Construction, Inc. for the performance of inside electrical work and ancillary work at the East Side Maintenance Yard project in Baltimore, Maryland. Thereafter, and apparently based on that proposal, on February 10, 1999, Orfanos contracted with Kodiak Line to do the work. The electrical work at the jobsite was, in fact, handled by Kodiak Line.

Demski claimed, in his testimony, that in November 1998, in a telephone conversation with Local 24 business manager James Kauffman, he, Demski, was advised that Kodiak Electric could no longer obtain employees via referral by Local 24 due to the Company’s delinquency in funds contributions and transmittal of union dues. According to Demski, Kauffman further stated that the Union did not have an obligation to send labor to delinquent contractors and that, to remedy the situation, Kodiak Electric would have to post another bond, or put \$50,000 into an escrow account. In this same conversation, Demski further testified, Kauffman stated that absent the new bond, or \$50,000 escrow payment, conditions which Demski would not agree to, Kodiak Electric “did not qualify to be a union contractor” and “would not even be considered under the new agreement that was coming out in March of 1999.” On the basis of this conversation, Demski stated in his testimony, he concluded that he did not need to provide written notice of Kodiak Electric’s intent to terminate the collective-bargaining agreement in order to accomplish such termination, despite the contrary requirement specified in the 1996 to 1999 contract, and the letter of assent, of which Demski was aware.

Kauffman, in his testimony, denied that he ever told Demski that Kodiak Electric would not be considered as a contractor under the new agreement, or that Demski was not required to provide written notice of termination under the contract. Kauffman further testified that the Union never refused to supply workers to Kodiak Electric, and never threatened to do so. As Kauffman impressed me as an honest and forthright witness, in possession of an accurate recollection of events, I credit his testimony and, for the reasons noted at footnote 2, I discredit Demski’s contrary assertions.

C. Conclusions

The Board will find an *alter ego* relationship to exist between two nominally separate entities if the two employers concerned have substantially identical management, business

purpose, operations, equipment, customers and supervision, as well as ownership.⁶ In the absence of an identity of ownership, or an ownership interest demonstrated by the holdings of one company in the other, the Board will examine whether the degree of control exercised by the first entity in the affairs of the second is such “as to obliterate any separation between them.”⁷ Additionally, the Board assesses whether the new or second company was created so as to allow the old employer to evade responsibilities under the Act, and whether the two entities deal with each other, if at all, at arms’ length, with due regard for separateness.⁸ However, unlawful motivation is not a necessary element of an *alter ego* finding.⁹ Indeed, the Board consistently has held that no one factor, taken alone, is determinative, a substance-over-form approach approved by the courts. Thus, in *Omnitest Inspection Services*,¹⁰ the Court, in enforcing the Board’s order, stated:

[The Employer’s] challenge to the Board’s reliance on actual control suggests that an *alter ego* finding should turn upon formal ownership alone. This argument ignores the Board’s decisions that the substantial identity of formal ownership is not the *sine qua non* of an *alter ego* relationship. . . . We are satisfied that the Board’s multi-factor test is a reasonable construction of the Act, and that depending on the facts of the case, actual control can be more significant than formal ownership.

Once a finding of *alter ego* relationship is made, it follows that the collective-bargaining agreement of the one employer is binding upon the second entity.¹¹

In applying the above criteria, Board case law also instructs that, in the absence of common ownership, the older company must exercise very substantial control over the new one, in order to support an *alter ego* finding. Further, the lack of anti-union motivation in the creation of the second entity generally militates against finding a “disguised continuance” of the original organization.

In the instant case, both Kodiak Electric and Kodiak Line are managed and entirely controlled by Timothy Demski, who obtains the work for each entity. At least most of the Kodiak Line supervisors were the Kodiak Electric supervisors during its active period. Both businesses are fully owned by members of the Demski family and thus, for *alter ego* purposes, they are commonly owned.¹² While the two entities keep separate books, utilize separate equipment and, to a great extent, have different business purposes and customers, the record is replete with evidence that they operate in tandem, and without regard for separateness. Thus, they share a common space, without demarcation, office equipment and office employees. They pay

⁶ *Advance Electric, Inc.*, 268 NLRB 1001 (1984).

⁷ *American Pacific Concrete Pipe Co.*, 262 NLRB 1223 (1982).

⁸ *Fugazy Continental Corp.*, 265 NLRB 1301 (1982), *enfd.* 725 F.2d 1416 (D.C. Cir. 1984).

⁹ *Johnstown Corporation and/or Stardyne, Inc.*, 313 NLRB 170 (1993), *enf. denied and remanded* 41 F.3d 141 (3rd Cir. 1994), *supp. dec.* 322 NLRB 818 (1997).

¹⁰ 297 NLRB 752 (1990), *enfd.* 937 F.2d 112 (3rd Cir. 1991).

¹¹ *Watt Electric Co.*, 273 NLRB 655 (1984).

¹² *Haley and Haley, Inc.*, 289 NLRB 649 (1988).

each other's bills and obligations and make loans to each other, apparently without the necessity of repayment. They have held themselves out, to customers and suppliers, as a single entity, and Kodiak Line has performed the interior electrical work obtained and started by Kodiak Electric.

Further, I conclude that Kodiak Line was created, in substantial part, to enable Demski to avoid Kodiak Electric's obligations under the labor agreement. Thus, by 1998, Demski made clear his dissatisfactions with the contract and what he viewed as its excessive wage cost provisions. He ceased unilaterally to make required fringe benefit contributions, to transmit union dues and, later, had Kodiak Electric cease to utilize the contractual referral provisions. Following creation of Kodiak Line, Demski diverted the bargaining unit work of Kodiak Electric to the new, nonunion entity and, ultimately, no longer applied the labor agreement, at all, to the work of either entity.

Based upon the above, I conclude that Kodiak Electric's sole owner and president, Timothy Demski, created Kodiak Line, in substantial part, to evade obligations under Kodiak Electric's contract with the Union, and that Kodiak Line is the disguised continuance of, and the *alter ego* of, Kodiak Electric. By refusing to apply the contract terms to the unit employees, including the payment of contractual wage rates and fringe benefit contributions, failing to honor the contractual referral procedures, repudiating its recognition of, and contract with, Local 24, and by diverting bargaining unit work in order to escape contract requirements, the Respondent violated Section 8(a)(5) of the Act. Kodiak Electric was bound by the terms, not only of the 1996 to 1999 agreement with the Union, but, also, by the term of the successor contract, running until 2002, as it failed to provide timely written notice of intent to terminate, as required by the 1996 to 1999 contract, and by the terms of the letter of assent. As the *alter ego* of Kodiak Electric, Kodiak Line was similarly bound.

IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practice conduct in violation of Section 8(a)(5) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. As it does not appear that the projects for which the Respondent failed to meet its obligation to satisfy staffing needs by utilizing the referral procedure are, in fact, ongoing, an order that the Respondent offer employment to those on the Union's out-of-work list is not provided.

CONCLUSIONS OF LAW

1. Kodiak Electric Company, Inc. and Kodiak Line Company, Inc., *alter egos*, constitute an employer engaged in com-

merce, and in operations affecting commerce, within the meaning of Section 2(2), (6) and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local 24, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All journeymen-wiremen, journeymen-technicians, general foremen, foremen, sub-foremen and apprentices employed by the Respondent, but excluding all office clerical employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the Union has been the limited exclusive representative of all employees in the aforesaid bargaining unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing to apply the terms of its collective-bargaining agreements with the Union to the unit employees, including payment to them of contractual wages and payment on their behalf of fringe benefit contributions; failing to honor the contractual referral procedures and, instead, hiring employees directly and without notification to the Union; repudiating its recognition of, and contract with, the Union and by causing work obtained by Kodiak Electric Company to be performed by Kodiak Line Company, the Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(5) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, and conclusions of law, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:¹³

ORDER

The Respondent, Kodiak Electric Company, Inc., and Kodiak Line Company, Inc., *alter egos*, Baltimore, Maryland, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the Union, in an appropriate unit, by refusing to apply the terms of its collective-bargaining agreements, including wage rates and fringe benefits fund contributions, to its employees; failing to honor the contractual referral procedures and, instead, hiring employees directly and without notification to the Union; repudiating its recognition of, and contracts with, the Union and by causing work obtained by Kodiak Electric Company to be performed by Kodiak Line Company.

(b) In any like or related manner, interfering with, restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Honor and abide by the terms and conditions of its contracts with the Union, including the exclusive hiring hall provi-

¹³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

sions, and make whole its employees represented by the Union, and those on the Union's out-of-work list, for any loss of pay and other benefits suffered as a result of the Respondent's refusal to apply the contracts, beginning in February 1999. Backpay shall be computed as set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(b) Pay all contractually required fringe benefit fund contributions not previously paid, in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). In addition, make unit employees, and those on the out-of-work list, whole for any expenses resulting from the failure to make such contributions, with interest, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, *supra*.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Baltimore, Maryland, copies of the attached notice marked "Appendix."¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In addition, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 1, 1999.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official, on a form provided by the Region, attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 27, 2000

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with International Brotherhood of Electrical Workers, Local 24, AFL-CIO, by refusing to apply the terms of our collective-bargaining agreements, including wage rates and fringe benefits fund contributions, to the employees; failing to honor the contractual referral procedures and, instead, hiring employees directly and without notification to the Union; repudiating our recognition of, and contracts with, the Union and by causing work obtained by Kodiak Electric Company to be performed by Kodiak Line Company.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL honor and abide by the terms and conditions of our contracts with the Union, including the exclusive hiring hall provisions, and make whole our employees represented by the Union, and those on the Union's out-of-work list, for any loss of pay and other benefits suffered as a result of our refusal to apply the contracts, plus interest.

WE WILL pay all contractually required fringe benefit fund contributions not previously paid and make unit employees, and those on the out-of-work list, whole for any expenses resulting from the failure to make such contributions, plus interest.

KODIAK ELECTRIC COMPANY, INC. AND KODIAK LINE
COMPANY, INC., ALTER EGOS

¹⁴ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted By Order Of The National Labor Relations Board" shall read "Posted Pursuant To A Judgment Of The United States Court Of Appeals Enforcing An Order Of The National Labor Relations Board."